IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 685 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ABHILAPSINH JALSINH BHADORIA

Versus

STATE OF GUJARAT

Appearance:
MR G RAMAKRISHNAN for the appellant.
Mr.K.T. Dave, ADDL. PUBLIC PROSECUTOR for the respondent.

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 13/03/2002

ORAL JUDGEMENT (Per : MR.JUSTICE RAVI R.TRIPATHI)

The present appeal arises from the judgement and order passed by the Additional City Sessions Court No.3, Ahmedabad in Sessions Case No.36 of 1995 dated 5.7.1996 for an offence under section 20(B)(2) of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter

referred to as "the Act"). The learned Judge was pleased to award rigorous imprisonment for 10 years and fine of Rs.1 lakh, and in default rigorous imprisonment for one year.

2. The facts of the case are that on 21.10.1994 at 8.40 PM, near Oriental building situated on Relief Road in the city of Ahmedabad on a public road, the accused was found to be in possession of 800 grams of Charas and thus, committed an offence under section 20(B)(2) of the Act.

3. The case of the prosecution is that when Police Inspector Shri S.J. Mansuri was on duty at Kalupur Police Station on 21.10.1994 at 6.10 PM, SRP First Grade Jamadar, Shri Mangalram Mekram Pal, SRP Group XII-B Company, Gandhinagar with SRP Constable Shri Virsing Rampat Yadav and Police Constable Shri Pruthvisingh Jadeja had brought the accused before him and informed that with this accused in a white bag there is a black substance like Charas. Police Inspector, Shri Mansuri called two Panchas in the room of investigating squad of Kalupur Police Station and 'Vardi' was given to an expert from Forensic Science Laboratory and intimation of this fact was given to the superior officer. Thereafter, the Panchas were explained about the search of person of this accused. On an inquiry the accused gave his name to be Abhilakhsinh Jalsinh Bhadoria, aged 34, resident of Village Shihuda, Post Shihuda, District Bhind, Madhya Pradesh. Police Inspector, Shri Mansuri informed the accused that before the search of the person of the accused is taken, he would like to have the search of the officer and the Panchas. The accused was also informed that if he wishes that his search be made in presence of a Sub Divisional Magistrate, it can be so arranged. The accused denied both these offers and hence the search was carried out. It was found that in his cotton bag there was a plastic bag on which a word, 'Tulsi' was printed in English. In that plastic bag, six cylindrical pieces wrapped in a newspaper were found. On smelling the said article, by the Panchas and the Police Inspector, it was found to have been smelling Charas. For weighing the article, Police Constable Shri Takhansingh was sent to call a person with weighing scale. In the meantime, Assistant Police Commissioner, 'D' Division, Ahmedabad City, Shri N.R. Parmar reached the scene. He also observed that the article found from the plastic bag was smelling of Charas. On further search of the person of the accused, from the right pocket of his pant, a Post Card dated 17.6.1994, addressed to the accused was found and an Identity Card of SRP Force was also found. It

bore a stamp which was illegible. In the said card, the name of the accused was written in English. It also contained his photograph. Currency notes worth Rs.800/-, were found. A cotton belt tied round the waist of the accused was found. Inside the said belt, the words, "SRP Q/2 dated 5.7.1994" were written. On weighing the article, it was found to be 800 grams. In the meantime, the expert of the Forensic Science Laboratory, Shri Dave also reached. After examining the article, he gave prima facie opinion that the article is Charas. It was inquired from the accused as to whether he had any licence for possessing the said article, to which he replied in 'negative'.

4. Thereafter, the aforesaid six cylindrical objects were wrapped in a newspaper and were kept in plastic bag. They were then kept in white bag. On that a white cloth was wrapped and it was stitched. Thereafter, on that a slip containing signatures of Panchas, the complainant and Assistant Police Commissioner, Shri N.R. Parmar was placed and tied and then seal of the "Inspector of Police, Kalupur Police Station" was affixed. The complainant then filed a complaint which is produced at exhibit 13. A report, exh.14 with the original complaint, Panchnama of the search and seizure, exh.12 along with the accused and the Muddamal were sent to the PSO, Kalupur Police Station. The PSO, Kalupur Police Station registered the offence being C.R. No.252 of 1994 and the matter was entrusted to PSI, Shri J.K. Jhala for investigation. The Muddamal article was sent by a forwarding letter which is at exhibit 17 to the Forensic Science Laboratory for analysis. The receipt was kept in the record. On 20.3.1995 analysis report from the Forensic Science Laboratory was received which is at exh. 35. There being evidence against the accused, charge sheet was filed on 2.2.1995. On 3.7.1995 when the accused was present before the Sessions Court, the charge, which is at exhibit 1 was read over and explained to him. The accused denied the charge and prayed that the case be tried on merits.

5. The following persons were examined as witnesses:

(i) Shri Shakurbhai Jamalbhai Mansuri, exhibit 11, the complainant in this case, who was serving as P.I. at Kalupur Police Station, who had carried out the search of the person of the accused and effected seizure.

(ii) Shri Bhupendrabhai Genaji Marwadi Prajapati, exh.18, who had weighed the article.

(iii) Shri Tomarsinh Rampat Yadav, exh.20-SRP Constable, who was on duty at Oriental Building, Relief Road, who brought the accused to Kalupur Police Station.

(iv) Shri Mahipatsingh Amarsinh, exh.21, a Panch witness to a search and seizure Panchnama.

(v) Shri Rumalji Shivaji, exh.22, the Crime Writer Head at Kalupur Police Station on 21.10.1994.

(vi) Shri Muljibhai Shivabhai, exh.25, Head Constable of Kalupur Police Station, who had taken the sealed packet of Muddamal to the Forensic Science Laboratory.

(vii) Shri Dashrath Ranchhodlal Parmar, exh.28, a Panch witness to a search and seizure Panchnama.

(viii) Shri Raisinh Shursinh, exh.30, who was serving as PSI at Kalupur Police Station on 21.10.1994 and who had taken charge of the concerned Muddamal, etc. from P.I. Shri Mansuri.

(ix) Shri Jhalamsinh Kabhai Jhala, Investigating Officer, who carried out the investigation.

6. The prosecution also relied upon the following evidence, which was produced by list, exh.10:

(i) Report made by the Kalupur Police Station Officer dated 21.10.1994, exh.14.

(ii) Complaint dated 21.10.1994, exh.13.

(iii) Panchnama dated 21.10.1004, exh.12.

(iv) Report of the arrest of the accused dated 21.10.1994, exh.15.

(v) Report made to the Police Commissioner, Ahmedabad dated 21.10.1994, exh.16.

(vi) Forwarding letter by which Muddamal was sent to the Forensic Science Laboratory, exh.17.

(vii) Receipt of Muddamal issued by the Forensic Science Laboratory dated 24.10.1994, exh.26.

(viii) A report of Forensic Science Laboratory dated 23.1.1995, exh.35.

7. Leaned advocate Mr.Ramakrishnan appearing for the appellant assailed the judgement and order of the learned Judge on the ground that the complainant, P.I. Mr.Mansuri has not deposed to the effect that he had intimated the accused of his right of being searched in presence of the Magistrate or a gazetted officer. Learned advocate submitted that the deponent has stated that the accused was brought to the Police Station and he (the deponent) was informed about the accused was in possession of the substance. It is not stated by the deponent that before the article was seized from the accused, he was informed about his right of being searched in presence of a Magistrate or a gazetted officer. When it was pointed out to the learned advocate that the deponent has deposed in reply to the questions put by the learned Additional Public Prosecutor, he submitted that it is true that the learned Additional Public Prosecutor sought permission to ask questions under section 145 of the Evidence Act without declaring the witness to be hostile. He also submitted that the learned Judge without taking into consideration the circumstances and the facts of the case granted such permission. The learned advocate submitted that at that time the witness has deposed that before taking search of the person of the accused, he had asked him as to whether he would like to take search of the complainant and the Panchas. The accused had denied. It is further deposed that he had also asked the accused as to whether he would like to have his search in presence of the Magistrate or a gazetted officer for which he is entitled to, the accused had denied for that also. The witness also deposed that in the complaint there is a mention of this fact. Mr.K.T. Dave, learned Additional Public Prosecutor pointed out that it is specifically mentioned in the complaint that the accused was asked as to whether he would like to have search of the complainant and the Panchas to which he had said 'no'. He was also inquired as to whether he would like to have his search made in presence of a gazetted officer or Sub Divisional Magistrate, to which also the accused had said 'no'. He also pointed out that even in the Panchnama also this fact is mentioned. It is stated that after sending an intimation to the Forensic Science Laboratory expert and the senior officer, the complainant asked the name of the

accused. Thereafter, the complainant gave an understanding about the search of the person of the accused. It was also intimated to the accused that if he wants to take search of the complainant and the Panchas, he can do so. He was also asked as to whether he would like to have his search of person carried out in presence of either a superior officer or the Sub Divisional Magistrate, to which the accused had denied.

7. Besides the aforesaid point urged by the learned advocate for the appellant, he also submitted that both the Panchas have turned hostile and they have not supported the Panchnama and therefore, it is not safe to convict the accused merely on the basis of the evidence of Police Officer. The submission has no substance. The law laid down by the Honourable Supreme Court is not to that effect and hence it is rejected. Once the factum of compliance of the mandatory provisions of section 50 of the Act is proved from the complaint, the Panchnama and the deposition of the complaint and the learned advocate is not able to demonstrate that there is a breach of any mandatory provision of the Act, the conviction cannot be disturbed. There is no other point on which the judgement and order of the court below is successfully challenged by the learned advocate for the appellant.

8. Learned Additional Public Prosecutor, Mr.K.T. Dave submitted that only because two Panch witnesses have not supported the Panchnama and have turned hostile, it cannot be a ground to hold that there was no compliance of sec.50 of the Act. Mr.Dave submitted that as is held by the Apex Court, unless the deposition of the complaint is so shaky that it is found to be not reliable there is no reason to disbelieve his deposition. He submitted that it is rightly held by the learned Judge that the case of the prosecution is trustworthy and therefore, the contention raised by the learned advocate for the appellant must fail.

9. Learned advocate Mr.Ramakrishnan lastly submitted that one Rumalji Shivaji, who is serving as Crime Writer Head at Kalupur Police Station on 21.10.1994 has also not stated in his deposition, exh. 22 that there was compliance of section 50 of the Act. The submission made by the learned advocate is misplaced and devoid of any merit. The Crime Writer Head was examined to prove that the article in question was received by him in sealed condition and that the same was sent to the Forensic Science Laboratory through Head Constable, Shri Muljibhai Jivabhai, Buckle No.3073. The Head Writer has deposed to that effect by stating that muddamal was handed over to

him in connection with the offence registered as C.R. No.252 of 1994 by PSO Shri Raisinh Mahida and that the deponent had examined at that time that packet was in sealed condition. He had made necessary entry in the Register. This fact is proved by producing the said register before the Court. Learned advocate could not point out anything by which it can be said that the said witness has even remotely suggested that there was breach of any part of sec.50 of the Act. It is to be noted that every witness is supposed to state only about the part he played. All witnesses cannot state that there was full compliance of various provisions of the Act. It is only a particular officer who has complied with the provisions of sec.50 of the Act has to depose to that effect before the Court and if the same is corroborated by the contents narrated in the complaint and the Panchnama that is sufficient for the Court to hold that there was compliance of the provisions of sec.50 of the Act. The attempt of the learned advocate to assail the judgement and order on the ground that there was breach of sec.50 of the Act fails in view of the aforesaid discussion.

10. Learned advocate for the appellant then submitted that the appellant is suffering from Tuberculosis and is undergoing treatment for the said ailment in Jail. He also submitted that he has a daughter of marriageable age and therefore, the Court may consider his case with due sympathy. Assuming that what is stated by the learned advocate is true looking to the gravity of the offence which is duly proved against the accused, this Court of the opinion that no reduction can be ordered in the sentence awarded by the learned trial Judge. Learned advocate conceded that the present case does not fall within the provisions of sec.27 of the Act as the quantity seized is 800 grams which is not a 'small quantity'. Therefore, there is no question of the appellant getting the benefit of sec.27 of the Act.

11. In view of the aforesaid discussion we do not find any merit in the appeal. We are in full agreement with the reasons recorded by the learned Judge for the sentence awarded. In the result the Criminal Appeal fails. The same is dismissed with no order as to costs.

(Kshitij R. Vyas, J.)

(Ravi R. Tripathi, J.)
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